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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,763	05/20/2002	Dianne Beverley Croteau	10748-006	3008

1059 7590 09/22/2004

BERESKIN AND PARR
SCOTIA PLAZA
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TORONTO, ON M5H 3Y2
CANADA

EXAMINER

NELSON JR, MILTON

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,763

Applicant(s)

CROTEAU ET AL.

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-6, 8-16, 18-26, 32-33, 39-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-16, 18-26 and 39-45 is/are rejected.
- 7) ☒ Claim(s) 32 and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 1, 2004 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 4 of claim 39, "the person's" lacks proper antecedent basis. Claims 40-45 are indefinite since each depends from an indefinite claim.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 8/1, 8/3 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ullman (4690459). Note the first support surface (2), second support surface (3), forward facing edge (5), angle ranging from "about" 10 degrees to about 30 degrees (see column 2, lines 17-18), and common edge (see Figure 2).

Claims 1-3, 5, 6, 8/1, 8/3 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (5575534). Note the first support surface (211), second support surface (212), angle ranging from about 10 degrees to about 30 degrees (see column 9, lines 12-13), and common edge (see Figure 13) that is "about" 12 cm radius.

Claims 1, 2, 5, and 8/1 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbert (5791736). Note the first support surface (26), second support surface (24), and angle ranging from about 10 degrees to about 30 degrees (see column 5, line 55).

Claims 14-16 and 18, 19, and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ullman (4690459). Note the first support surface (2), second support surface (3), forward facing edge (5), angle ranging from "about" 10 degrees to about 30 degrees (see column 2, lines 17-18), and common edge (see Figure 2).

Claims 14-16, 18, 19, and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (5575534). Note the first support surface (211), second support surface (212), angle ranging from about 10 degrees to about 30 degrees (see column 9, lines 12-13), and common edge (see Figure 13) that is "about" 12 cm radius.

Claims 14, 15, 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbert (5791736). Note the first support surface (26), second support surface (24), and angle ranging from about 10 degrees to about 30 degrees (see column 5, line 55).

Claims 39-41 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ullman (4690459). Note the frame (7), first support surface (2), second support surface (3), forward facing edge (5) and common edge (see Figure 2).

Claims 39-41 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (5575534). Note the frame (400), first support surface (211), second support surface (212), and common edge (see Figure 13).

Claims 39-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbert (5791736). Note the frame (10), first support surface (26), second support surface (24), and front to back extent of the second support surface being

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"approximately" equal to the front to back extent of the first support surface (see Figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullman (4690459) in view of Herbert (5791736), or in view of Yu (5575534), or in view of Des. (292454). The primary reference shows all claimed features of the instant invention with the exception of the common edge having a rounded profile (claim 11), and the rounded profile of the common edge being about 12 cm in radius (claim 12).

Note the discussion of Ullman above.

Each of the secondary references conventionally teaches configuring a common edge of a seating assembly front and back portion as having a rounded profile. Note Figure 2 of Herbert. Note Figure 11 of Yu. Note Figure 3 of Des. (292454). Also note that the common edge of each is "about" 12 cm in radius.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of any of the secondary references by forming the non-rounded common edge (see Figure

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3) of the primary reference as a rounded common edge. Such conventionally provides a smoother common edge for enhanced user comfort. It would have been further obvious to configure the radius of the common edge at "about" 12 cm, as shown in any of the secondary references. Such merely represents an obvious matter of choice in design. The radius of "about" 12 cm provides a dimension that provides no criticality to the performance of the seating assembly. As such, the change in radius from the primary reference to that of any of the secondary references represents comparative dimensions that provide equivalent performance.

Claims 13/1 and 13/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullman (4690459) in view of Congleton (4552404). The primary reference shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Ullman above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claims 13/1 and 13/3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Congleton (4552404). The primary reference shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Yu, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claim 13/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herbert (5791736) in view of Congleton (4552404). The primary reference shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Herbert, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

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It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullman (4690459) in view of Herbert (5791736), or in view of Yu (5575534), or in view of Des. (292454). The primary reference shows all claimed features of the instant invention with the exception of the common edge having a rounded profile (claim 24), and the rounded profile of the common edge being about 12 cm in radius (claim 25). Note the discussion of Ullman above.

Each of the secondary references conventionally teaches configuring a common edge of a seating assembly front and back portion as having a rounded profile. Note Figure 2 of Herbert. Note Figure 11 of Yu. Note Figure 3 of Des. (292454). Also note that the common edge of each is "about" 12 cm in radius.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of any of the secondary references by forming the non-rounded common edge (see Figure 3) of the primary reference as a rounded common edge. Such conventionally provides a smoother common edge for enhanced user comfort. It would have been further obvious to configure the radius of the common edge at "about" 12 cm, as shown in any

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of the secondary references. Such merely represents an obvious matter of choice in design. The radius of "about" 12 cm provides a dimension that provides no criticality to the performance of the seating assembly.

Claims 26/14 and 26/16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ullman (4690459) in view of Congleton (4552404). The primary reference shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Ullman above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claims 26/14 and 26/16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu (5575534) in view of Congleton (4552404). The primary reference shows all claimed features of the instant invention with the exception of the

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pommel extending upwardly from at least one of the support surfaces. Note the discussion of Yu, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Claim 26/14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herbert (5791736) in view of Congleton (4552404). The primary reference shows all claimed features of the instant invention with the exception of the pommel extending upwardly from at least one of the support surfaces. Note the discussion of Herbert, above.

The secondary reference conventionally teaches configuring a seating assembly with a pommel (34) extending upwardly from at least one support surface of the assembly.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding a pommel extending upwardly from at least one

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support surface of the assembly. Such conventionally provides a means for enhancing user restraint and support.

Allowable Subject Matter

Claims 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments/Amendment

Applicant's response has been fully considered. Arguments provided therein are now moot in view of the new grounds of rejection.

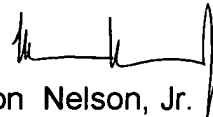
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
September 16, 2004
